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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,897	01/31/2000	Timothy E. Dickson	2400-384	4099

27820 7590 11/26/2002

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EXAMINER

VON BUHR, MARIA N

ART UNIT	PAPER NUMBER
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2125

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DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/494,897

Applicant(s)

DICKSON, TIMOTHY E.

Examiner

Maria N. Von Buhr

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Examiner acknowledges receipt of Applicant's response to the previous Office action, received September 16, 2002; which amends the specification. Claims 1-46 remain pending in this application.
2. In response to Applicant's amendment to the specification, the objection to the disclosure is deemed to have been overcome and is, therefore, withdrawn.
3. In response to Applicant's remarks, concerning the 35 U.S.C. §102(e) rejection of claims 1-46, as being clearly anticipated by Myers et al. (U.S. Patent No. 6,296,148), Applicant's argument is deemed not to be persuasive.

Particularly, Applicant argues that the instant claims provide for "the actual flow rate measured by the fuel dispenser meter [that] is compared with some other reference amount indicative of the fuel flow rate to determine if the actual and reference amounts differ from each other as an indication of fraud," while the Myers et al. reference utilizes a "pulser output indicative of actual fuel flow rate [that] is scanned by the fuel dispenser for unexpected anomalies in the pulse signal generated by the pulser ... Myers does not compare the actual fuel flow rate to a reference related to the fuel flow rate. The signature in Myers is not a reference related to the fuel flow rate, but a signature of the pulse generating device that can show tampering with the pulse generating device. Myers is simply looking for an unexpected anomaly in the pulser data signals indicative that tampering has occurred to the pulser" (page 3 of the response). Examiner does not agree with Applicant's characterization of the signature of Myers et al. as not being "a reference related to the fuel flow rate," because Myers et al. clearly define their signature as being related to fuel flow rate. Specifically, Myers et al. teach that "[a]lthough the present invention has been discussed to this point in terms of an electronic signal generated by a pulser, the practice of the invention includes the use of other "signature" electronic signals. One such signal is the characteristic signal developed by certain types of positive displacement meters used in fuel dispensers. For example, piston-type positive displacement meters measure volume by counting the cyclic displacement of pistons as fluid flows therethrough. The pistons reciprocate through cylinders whose volume has been determined very accurately. It has been discovered that even at a "constant" flow rate, the cyclic action of the pistons causes minute, measurable fluctuations in flow rate. Further, it has been discovered that for a given meter model, these fluctuations are constant from meter to meter and can be used as a characteristic, identifying anomaly for that particular model" (col. 10, lines 50-65). Hence, it is clear that the signature of Myers et al. is a "reference related to the fuel flow rate."

Therefore, Applicant's argument is deemed not to be persuasive, and claims 1-46 stand rejected under 35 U.S.C. §102(e), as being clearly anticipated by Myers et al. (U.S. Patent No. 6,296,148).

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. **Any response to this FINAL Office action should be mailed to:**

Box AF
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to the Office at:

(703) 746-7238 - for formal communications intended for entry, mark "FORMAL";
(703) 746-7240 - for informal/draft communications; label "PROPOSED" or "DRAFT".

Hand-delivered papers should be brought to Crystal Park II, 2121 Crystal Dr., Arlington, VA, 4th Floor (Receptionist).

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Maria N. Von Buhr whose telephone number is (703) 305-3837. The Examiner can normally be reached on Monday-Thursday between 8:00 A.M. and 4:00 P.M.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Leo Picard can be reached at (703) 308-0538.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.



MARIA N. VON BUHR
PRIMARY PATENT EXAMINER
ART UNIT 2125